

EXHIBIT K

THE LOAN CLOSING

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The loan closing process appears to be a very intimidating process. However, with the help of professionals (attorneys and title companies), the process can work very smoothly. The key is preparing a checklist, outlining the responsible parties, establishing time frames, securing/preparing the required documents, setting-up the closing and the loan closing itself. The loan closing will differ depending on the type of loan (i.e. construction, working capital, acquisition, etc.).

Upon approval of a loan by the Loan Committee, the first action item is to prepare the Loan Commitment. This Loan Commitment details the terms and conditions of the loan. Upon acceptance of the Loan Commitment by the borrower, the lender can determine if all the parties are in agreement. This step includes reviewing all other lender's Loan Commitments. A pre-closing conference may be helpful to establish the required documents and roles/responsibilities. A loan closing checklist should be prepared at this point in the process.

The next step is the preparation/submittal of required loan closing documents. Preparation will be done by both the borrower and the lender. Submittals will be made by the borrower and other lenders. The lender's attorney will prepare most of the required documents. If an escrow is involved, the lender will prepare lender's escrow instructions. This may include lien searches on real and/or personal property.

Upon execution of the required documents/agreements and satisfaction of the conditions precedence to close the loan, the loan is closed. Disbursement of funds may occur at the close of escrow or over a period of time as costs are incurred.

Immediately upon the close of escrow, key documents (Promissory Note, etc.) should be filed in a fireproof vault. Copies should be placed in the original loan file. The legal file should be completed and a tickler file established on items due over time.

LOAN CLOSING DOCUMENTS

Loan closing is a very critical phase of operating a successful loan program. It is complicated and an attorney and title company should be used to close most, if not all, loans. The following is a summary of the typical key loan closing documents.

* **Commitment Letter:** The Commitment Letter outlines the specific terms and conditions upon which the lender will make the loan. The Commitment Letter includes all conditions, contingencies and time frames for the commitment.

* **Loan Agreement:** The Loan Agreement is the key legal document between the borrower and the lender. The Loan Agreement contains all the terms and conditions of the loan and outlines the rights, responsibilities and obligations of both the borrower and lender. This includes any special CDBG and loan program requirements (i.e. jobs, etc.).

A sample Loan Agreement is attached in Exhibit A. The Loan Agreement should be either drafted or reviewed by the attorney involved in closing the loan.

A Loan Agreement is required for every loan.

* **Promissory Note:** The Promissory Note obligates the borrower to repay the loan. The Promissory Note lists the amount of the loan, interest rate, and loan term.

A sample of a Promissory Note is attached in Exhibit E.

A Promissory Note is required for every loan.

* **Deed of Trust:** A Deed of Trust is a specific lien executed against real property pledged as collateral. The Deed identifies the specific piece of real property pledged as collateral. A properly executed and recorded Deed of Trust is critical to establishing the lenders lien against the property pledged as collateral. The Deed may be against the real estate being financed, personal residence, and or other real estate.

The Deed of Trust must be recorded to be recognized. The Deed is recorded at the County.

A Deed of Trust is always required when real property is pledged as collateral.

*** Uniform Commercial Code (UCC) Filing:** A UCC-1 filing is a specific lien against personal property (machinery, equipment, inventory, etc.) pledged a collateral. A UCC-1 typically defines each specific asset pledged as collateral, although many lenders take blanket liens on all current and future assets. It is important that the UCC-1 filing be properly filled out, including checking the box to ensure that proceeds from the sale of any asset pledged as collateral is also pledged. The UCC-1 is filed with the Secretary of State.

It is a good idea to file a UCC-3, which is a request for information, several days after filing the UCC-1 to ensure the UCC-1 is filed correctly. A UCC-1 must be renewed periodically, so this needs to be noted in a tickler file.

The UCC-1 usually applies to most transactions, particularly where machinery, equipment and inventory is being financed. A UCC-1 can also be filed on real estate transaction as a general security lien.

*** Guarantee:** A Guarantee (either business and/or personal) is a general lien against the assets of the party providing the guarantee. In the case of a business guarantee, a lender, in the case of a default, has the right to foreclose upon the business and take the remaining assets that remain after specific liens have been addressed.

A personal lien allows the lender, upon default on the loan, to foreclose upon personal assets of the party (usually the business owner) providing the guarantee.

Guarantees, particularly personal guarantees, are used in user transactions and/or where the lender is in a subordinate position or the collateral is weak.

*** Insurance:** The transfer of a borrowers right to insurance proceeds is important to protect the lender in the case of an event. If the case of the partial or complete destruction of a building housing a borrower, the lender should have the ability to have the amount due on the loan repaid to the lender by the insurance company. Therefore, the lender should have an assignment of Hazard Insurance at closing of the loan. A copy of a standard hazard insurance policy issued by an acceptable insurance company is acceptable.

As evidence, the insurance policy should be provided showing that it has been paid. The policy should be in an amount greater than the loan or 100% of the insurable value of the property, with extended coverage as deemed

necessary. The policy should contain a standard mortgagee loss payable clause assigned to the lender.

Assignment of Hazard Insurance should always be required. It is important that the insurance policy have the lender as beneficiary.

If the real property securing the loan is in a flood zone, it is important that flood insurance be required and assigned to lender.

If the success of the business is tied to one or several key individuals, the lender should require life insurance policies to be assigned to the lender. This can either be existing policies or a new policy. The policy would name the lender as beneficiary of the insurance in case of death or disability while the loan is still in place.

It is important to consult with an attorney to ensure that the insurance assignments are correct.

*** Title Insurance:** When real property is involved in the transaction, either acquired and/or improved by loan proceeds, and/or used as collateral for the loan, title insurance should be required. The type of title insurance (CLTA or ALTA) policies required, specific endorsement and whether a binder should be issued is complicated. It is strongly advised that the lender work with an attorney and title company to determine the best policy to protect the loan. A review of title exceptions is important to ensure that only those exceptions acceptable to the lender are in prior position.

*** Corporate Resolution to Borrow:** A general resolution that describes who is empowered to borrow on behalf of a corporation. A separate Certificate, or part of the corporate resolution should state that the corporation has agreed to the loan.

For corporations, these document(s) should always be required.

*** Opinion of Counsel:** The opinion of counsel verifies that the business is a legal entity, is empowered to borrow and has no existing or pending litigation.

*** Intercreditor Agreement:** An Intercreditor Agreement is used when there are two or more lenders with claims against the same collateral. The Intercreditor Agreement sets forth the obligations of the lenders to each other with respect to foreclosure.

* **Subordination Agreement:** A Subordination Agreement is required when, as a condition of your loan, another existing lender is required to subordinate to your loan.

* **Other Documents:** Other documents necessary to close a loan include:

- * Certificate of Good Standing (Secretary of State)
- * Articles of Incorporation/By-Laws
- * Partnership Agreement
- * Appraisal
- * Cost Estimates
- * Construction Contracts
- * Phase 1 Environmental
- * Loan Commitments From Other Lenders
- * Complete Loan Application

In any closing of a loan, legal counsel should be involved. A title company is also usually involved.

REVOLVING LOAN FUND

PRE-CLOSING CHECKLIST

- _____ A copy of the construction contract between the business and the general contractor.
- _____ A copy of the final construction/rehabilitation plans stamped by the appropriate local agency - city building department.
- _____ A copy of the Construction Contractors Performance Bond (100% Performance, Labor and Material Bond - owner as obligee).
- _____ A copy of the building permit.
- _____ A letter from an insurance agent, stating that hazard insurance will be in effect upon closing of the loan, naming the Lender a mortgagee. Insurance should for the total amount of the project.
- _____ A copy of the contractor's workers' compensation and Builders Risk Policy.
- _____ A lien form (UCC_1) on all machinery and equipment, inventory and accounts receivable to be held as collateral.
- _____ Copy of the purchase agreement between buyer and seller.
- _____ Copy of the Loan Commitment Letter.
- _____ Executed Loan Agreement.
- _____ Promissory Note.
- _____ Deed of Trust for Real Property
- _____ Any Personal and/or Corporate Guarantees
- _____ Assignment of Life Insurance
- _____ Copy of Corporate Resolution to Borrow
- _____ Opinion of Business's Counsel
- _____ Intercreditor Agreement
- _____ Subordination Agreement
- _____ Appraisal

____ Copy of all Loan Commitments from other Lenders
____ Partnership Agreement
____ Certificate of Good Standing
____ Articles of Incorporation/By-Laws
____ Resolution of Board
____ Non-Financial Employment Agreement
____ Personal Credit Report(s)
____ Personal Tax Returns
____ Corporate Financial Statements
____ Corporate Tax Returns
____ Lease or rental agreement
____ Escrow Instructions

REVOLVING LOAN FUND

SAMPLE ESCROW INSTRUCTIONS

Send to Title Company or Bank Escrow Officer. Reference the Escrow number obtained from Preliminary Title Report. Put in letter format.

1. Identify parties of the transaction. Give Escrow Number if you have had one assigned in Preliminary Title Report.
 - Names
 - Legal Structure (if business)
 - Address
2. Recite intentions of above parties
 - Identify Buyers and Sellers
 - Identify Sources and Amounts of Financing
 - Identify Role and Duties of all Parties
 - Identify Order of Priority of Parties to security or collateral
3. Identify all documents submitted.
 - Loan Agreement(s)
 - Promissory Note(s)
 - Deed(s) of Trust (Identify position for filing)
 - Assignment(s) of Deed(s) of Trust
 - Notice(s) of Default
 - Personal and Corporate Guarantee(s)
 - Checks - including maker, amount and payee
 - Any other appropriate documents
4. Instructions and Authorizations to Escrow Officer.
 - Delivery of Checks and/or documents
 - Insertion of dates and conforming of documents- all dates same
 - Recordation of Documents after signatures obtained
 - Disbursement of Checks and/or funds
 - Insurance and delivery of Policies of Title Insurance
 - Delivery of other documents
 - Return of original documents
 - Bill the borrower for any charges incurred for your services

5. Conditions to be met prior to Recordation.

- Sample language: "You are authorized to record the appropriate documents and disburse our deposited check when the following conditions have been met....."
- Hazard insurance on fixed assets (specify amount and assignees)
- Signing of the construction contract.
- Project surety bonding (specify type and terms.
- Other policies of insurance (life & liability, specify amounts and assignees)
- Evidence of appropriate licenses and permits.
- Endorsements of Title Insurance

NOTE: It is essential that project escrow instructions be reviewed by an attorney prior to submittal to the Title/Escrow Company.

Agent
Title Company
Address
City and State

DATE:_____

Dear:

You are in the process of closing an escrow for the purchase of _____. The purchasers are _____.

The _____ of _____ will be making a loan from the _____ Revolving Loan Fund in the amount of \$_____. The terms of the loan will be _____ years at _____ percent interest. The loan would be fully amortized over a _____ year period.

Prior to disbursing the funds from escrow you should complete the following list of items:

1. Have four (4) originals of the loan agreement signed and return them to me for _____ signature.
2. Prepare note and second Deed of Trust _____/California. This should also include assignment of rents. The _____ will subordinate to a \$_____ loan from the _____ Bank.
3. Place a _____ Deed of Trust in the amount of \$_____ on _____.
4. Have _____ sign both originals of the Guarantee Agreement provided and return them to me.
5. Obtain evidence of Life Insurance on _____ in the amount of \$_____, assigned to _____.
6. Obtain evidence of Fire and Liability insurance on both properties being used as collateral. A minimum of \$_____ on the properties. _____ is to be added as loss payee on both properties.
7. Collect \$_____ as a Loan Origination fee for the _____ of _____.
8. All fees to be paid by the Borrowers.

After the above activities have been completed, and prior to the disbursement of the Funds, we would like to review the documentation for completeness.

Please let me know if you have any questions.

Sincerely,